

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

WARREN E. POSTEN,

Appellant,

v.

KITSAP COUNTY and
WILLIAM STUMP,

Respondents.

SHB NO. 86-46

ORDER GRANTING
SUMMARY JUDGMENT

I. PROCEDURAL BACKGROUND

On September 22, 1986, Kitsap County issued to William Stump a substantial development permit to undertake the following:

Development of a three-unit apartment with garages located at 104 Grandview Boulevard, within Lot 4, Block 1, original town of Keyport, Kitsap County, Washington. Development is proposed to be within Liberty Bay and/or its associated wetlands.

The permit was made subject to conditions imposed by the County's Hearing Examiner in a decision rendered on May 29, 1985.

1 Concurrent with granting the substantial development permit, the
2 County passed a resolution approving a "preliminary" planned unit
3 development for Stumps' three-unit apartment building and approved an
4 amendment to the general county zoning ordinance, rezoning Stump's
5 property Business General to "R-18," subject to final planned unit
6 development approval.

7 On October 24, 1986, Warren E. Posten filed with the state
8 Shorelines Hearings Board a request for review of the county's
9 approval of Stump's substantial development permit, setting forth
10 grounds for objection in 23 separate paragraphs.

11 On October 29, 1986, the Board entered an order joining William
12 Stump as a party respondent in addition to Kitsap County. On November
13 5, 1986, the appeal was certified pursuant to RCW 90.58.180(1) by the
14 Attorney General and the Department of Ecology.

15 A prehearing conference was held on December 2, 1986, at which
16 time the County filed a motion to dismiss the appeal "because of its
17 frivolous nature." At the conference appellant Posten filed a
18 Statement of Issues raising a number of matters in addition to those
19 raised in his initial request for review.

20 The conference involved extensive discussion of the dispute but
21 no amicable resolution was reached. The Board, thereupon, determined
22 to schedule a motion hearing in the matter, providing an opportunity
23 for the filing of supplementary preliminary motions, and a period of
24 time for response thereto.

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1 On December 24, 1986, the County filed a Motion for Summary
2 Judgment, together with an affidavit of its Shoreline Administrator
3 and exhibits from the official file. The County also on that date
4 filed a Motion to Dismiss Unrelated Issues by which it sought to
5 eliminate from the shorelines case issues concerned with "zoning
6 questions, planned unit developments, economic impact and other
7 miscellaneous matters not within the Board's jurisdiction."

8 On January 12, 1987, appellant Posten responded, filing his own
9 37-page affidavit, 30 separate documentary exhibits, and two
10 additional affidavits.

11 Argument on the motions was heard on Friday, January 23, 1987, by
12 Board members, Wick Dufford (presiding), Lawrence J. Faulk, Chairman,
13 Judith Bendor and Nancy Burnett.

14 Warren Posten represented himself. Scott Missal, Deputy
15 Prosecuting Attorney, represented Kitsap County. Dr. Stump did not
16 participate.

17 II. ISSUES RAISED

18 The following is a verbatim reproduction of the issues stated in
19 appellant's request for review. Apparently by inadvertance, no
20 Paragraph IX was included.

21 I

22 The Kitsap County Department of Community Development
23 Staff Reports, Responsible Officials, The Hearing
24 Examiner Report, and Kitsap County Commissioners
25 decision to approve SDP #456, failed to adequately

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(3)

1 implement the provisions of the Shorelines Management
2 Act RCW 90.58, the Shoreline Management Master Program,
3 WDOE 83.9 and SEPA-RCW 43.21C and WAC 197-11. REF:
4 90.58.020, RCW 43.21C.020(1),(2).

5 II

6 Due to relevant documents not entered into the record,
7 the Hearing Examiner report and decision was unjustly
8 and unlawfully determined for the underlying rezone and
9 planned unit development of SDP #456. REF: WAC
10 197-11-655, Hearing Examiner Report #860419659.

11 III

12 Permit #456 for Shoreline Management substantial
13 development only references Master Program pages 7-21
14 thru 7-25. Master Program page 2-6 (Use, non-water
15 related), page 3-1 (Economic Development and
16 Recreations), page 4-4 (Urban Environment), page 7-1
17 and other applicable documents apparently were not
18 considered.

19 IV

20 SDP #456, DCD Staff Memo dated 9-4-86 Findings of
21 Facts, Fact #4, only reference Master Program Sec.
22 VIII, objection same as issue #III.

23 V

24 Although Keyport's urban designated waterfront is not a
25 shoreline of state wide significance above extreme low
26 tide, it is of state wide interest as a commercial and
27 recreational marine access area. Therefore, the
28 Keyport Urban shoreline is an area where all of the
29 people can derive benefit. In addition it is the duty
30 of Kitsap County to recognize and utilize its resources
31 that favor public and long range goals similar to those
32 stated in the Master Program page 6-1. REF: RCW
33 90.58.020, RCW 43.21C.010 and 020.

34 VI

35 SEPA pursuant to WAC 197-10 was repealed on 1-26-1984
36 and WAC 197-11 became effective 4-4-1984. REF: WAC
37 197-11 and Permit Memo DCD Staff dated 9-4-1986.

VII

DCD Staff Memo dated 9-4-86 condition 1, SDP #456 page 2A condition 1 and Exhibit A are unlawful if decision of issue II is determined unlawful.

VIII

Approval of SDP #456 is not consistent with public interest. REF: RCW 90.58.020.

X

SDP #456 as approved is an unreasonable and inappropriate use of this shoreline. REF: 90.58.020 and Master Program.

XI

SDP #456 is not preferred or water related use on this shoreline. REF: Master Program, Part 2 (Use, non-water related), RCW 90.58.020.

XII

SDP #456 does not provide for public access. REF: Master Program, Part 2 and 4, RCW 90.58.100(2)(C), WDOE 83-9 page 32 & 35, RCW 90.58.

XIII

Condition 9 of the Hearing Examiner Report #860410659 requiring a final landscape was not accomplished by applicant or reviewed by the Department of Community Development. In addition the requirement of a "five foot planting strip incorporating existing vegetation" is deceptive and equivocal statement as approved. REF: SDP #456.

XIV

As EIS should be required to evaluate significant impacts to the elements per WAC 197-11-444(2)(b)(i) and (2)(b)(v). REF: Master Program, RCW 90.58, RCW 43.21.

XV

Kitsap County justified an inappropriate change of zoning by the use of the term "actual use" which can contradict and destroy implementation of a planned use of existing designations and zoning. REF: RCW 90.58.020 and Hearings Examiner conclusion No. 6.

XVI

SDP #456 permit reflects no consideration of the Hearing Examiner Report No. 860410659 page 14 conclusion No. 8 relative to significant impacts to the Built Environment elements and concerns of Issue XIV.

XVII

The Kitsap County Commissioners and Hearings Examiners decision appears prejudiced by the applicant and Shorelines administrator thereby, causing an unjust and unlawful approval of SDP #456. REF: RCW 90.58.130, WAC 173-14-090.

XVIII

Approval of SDP #456 did not give reasonable and appropriate weight to testimony of the interested public and unjustly degraded the reason for testimony. REF: RCW 90.58.130, WAC 173-14-090.

XIX

Approval of SDP #456 shows the interests of local government and the applicant to be paramount over the interest of all the people for use of a Shoreline of state interest. REF: RCW 90.58.020.

XX

Approval of SDP #456 imposes a constraint of trade that will damage my business resulting from unjust implementation of SMA and abused integrity of the permit process by the lead agency and applicant. REF: RCW 90.58.230, Master Program page 3-1.

XXI

The site plan and utility of the upland parking

1 approved in SDP #456 is inadequate, unreasonable and
2 inappropriate. REF: Site Plan, Traffic Engineers
3 Handbook, SDP #456 condition 1, Hearing Examiner
condition 9, ORD. 93-1983 Sec. 17b(4), 3c(50) and
3c(25).

4 XXII

5 Approval of SDP #456 will damage present and future
6 adjacent property uses caused by the inherent
differences between business and residential zoning in
7 the urban environment shoreline. REF: ORD. 93-1983
Sec. 2b, 7a(2)(d), 7b(2)(e), 7e(2), 7e 3(a), 9d(3),
8 condition 12 and conclusion 7, Master Program page 4-4
(Urban Environment), page 3-1 (Economic
9 Development)(Recreation), page 2-6 (Use, non-water
related) page 2-3 (Shorelines)(Shorelines of the
County).

10 XXIII

11 Failure to adequately implement the significant
12 provision of RCW 90.58, WAC 197-11 and the Master
Program, relative to Keyport's urban designated
13 shoreline zoning and use, is an apparent violation of
public trust. REF: 173-14-020 WAC.

14 XXIV

15 Unjust damages to the appellant's private property due
16 to loss of time and money, planned for business
improvements and development expended to pursue
17 violations of the provisions of RCW 90.58, our public
trust should not have allowed this to occur. REF: RCW
18 90.58.230.

19 The following is a verbatim reproduction of the Statement of
20 Issues filed by appellant at the prehearing conference. The letter
21 "S" (supplementary) has been added preceding the roman numerals
22 assigned by appellant to differentiate these issues from those raised
23 in the request for review. Because it is not clear whether appellant
24

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1 intended these issues to replace the original listing or to add to it,
2 we have treated the Statement of Issues as supplementary.

3 S. I.

4 Was the three Permit processes and sequence used by
5 Kitsap County leading up to the approval of SDP456 and
6 the underlying rezone and PUD permits appropriate,
fair, trustworthy and lawful?

7 S. II

8 Was the approval of SDP456 and underlying Rezone
9 and PUD reasonable and appropriate as they relate to
the SMA, SEPA, Master Program and Zoning Ordinance?

10 S. III

11 Was Washington State Constitution Article II
12 Section 30 (Corrupt Solicitation) used to bias decision
makers and gain approval of SDP456 and underlying
Rezone and PUD?

13 S. IV.

14 Was excessive privilege used by Kitsap County
15 process to approve SDP4356 and cause delay to the
development of SDP422 as approved by SHB 84-53?

16 S. V.

17 Were my Supreme and State Constitutional rights to
18 liberty, prosperity and happiness violated by the
19 actions of the Respondents and the resulting impacts
created by approval of SDP456 and underlying Rezone and
PUD?

20 S. VI.

21 Was misrepresentation used by the Respondents
22 leading up to and including the Approval of SDP456 and
underlying Rezone and PUD?

23 S. VII.

24 Is harrassment to me a result of misrepresentation

1 of facts by the Respondents, leading up to and
2 including this Appeal of SDP456 and underlying Rezone
and PUD?

3 S. VIII.

4 Was Approval of SDP456 and underlying Rezone and
5 PUD a Tortious Act resulting in injury to the Appellant?

6 S. IX.

7 Did the actions of the Respondents create a
8 continuing untimely delay, and by said delay, destroy
9 my plan to complete the construction of SDP422 prior to
a personal event resulting in financial and material
loss injurious to my present and future financial
security?

10 S. X.

11 Does Approval of SDP456 and underlying Rezone to
12 Residential severely impact the commercial Shoreline
13 Land Use fundamental to the economical feasibility of
continuing the development of my Marina approved by SHB
84-53?

14 S. XI.

15 Did the attitudes and actions of the Respondents
16 from 1978 to present, leading to Approval of SDP456,
17 injure the purpose of the SMA (RCW 90.58), the interest
of the State, and my rights relative to land and
shoreline use surrounding SDP456?

18 III. MATERIALS CONSIDERED
19

20 In addition to the oral arguments of the parties, the Board
21 considered the following materials, filed in this matter:
22

- 23 1. Request for Review, filed October 24, 1986, with attachments:
24

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- a) Application or Shoreline Management Substantial Development Permit #456;
 - b) Permit for Shoreline Management Substantial Development, Application #456;
 - c) Kitsap County Resolution No. 306-1986, with conclusions and recommendations of Hearing Examiner attached.
2. County's Motion and Affidavit to Dismiss appeal, filed December 2, 1986.
 3. Appellant's Statement of Issues, filed December 2, 1986;
 4. County's Motion to Dismiss Unrelated Issues, filed December 24, 1986;
 5. County's Motion for Summary Judgment, filed December 24, 1986, with attachments:
 - a) Affidavit of Renee Beam, Shoreline Administrator.
 6. Memorandum of Authorities in Support of Motion for Summary Judgment, filed December 24, 1986, with exhibits:
 - a) Application for Shoreline Management Substantial Development Permit #456 (Ex. 1), including Environmental checklist;
 - b) Minutes, Kitsap County Board of Commissioners, September 8, 1986 (Ex. 2);
 - c) Staff Memo to Commissioners, September 4, 1986 (Ex. 3);
 - d) Minutes, Kitsap County Board of Commissioners, September 22, 1986 (Ex. 4);

- 1 e) Permit for Shoreline Management Substantial Development, App.
2 456 (Ex. 5), with conclusions and recommendations of Hearing
3 Examiner attached;
4 f) Plans for proposed development (5 sheets) (Ex. 6).

5 7. Affidavit of Warren E. Posten, filed January 12, 1987, with
6 exhibits attached, identified by appellant as follows:

7	(A1)	KITSAP ORDINANCE 100
	(A2)	EXAMINER REPORT NO. 851127610
8	(A3)	EXAMINER REPORT NO. 860410659
	(A4-1)	PG 1-1 A SHORT COURSE ON LOCAL PLANNING
9	(A4-2)	PG 1-6 AND 1-7 A SHORT COURSE ON LOCAL PLANNING
	(A4-3)	PG 2-13 A SHORT COURSE ON LOCAL PLANNING
10	(A5)	ORD. 93-1983 SEC. 10a TABLE
	(A6)	AGENDA SUMMARY STATEMENT
11	(A7)	ZONING MAPS - KEYPORT
	(A8)	TABLE - TRAFFIC ENGR. HANDBOOK
12	(A9)	KITSAP ORD. 3-A-1975
	(A10)	AFFIDAVIT OF PUBLICATION
13	(A11)	PUBLIC NOTICES
	(A12)	LAND USE MAP
14	(A13)	AFFIDAVIT OF LAURA WISE
	(A14)	AFFIDAVIT OF VIRGIL SAUERS
15	(A15)	SHORELINE DESIGNATION MAP
	(A16)	NEWS ARTICLE FEB. 6, 1985
16	(A17)	NEWS ARTICLE FEB. 13, 1985
	(A18)	NEWS ARTICLE SEPT. 23, 1986
17	(A19)	DOE LETTER NOV. 7, 1985
	(A20)	DOE LETTER NOV. 20, 1985
18	(A21)	REZONE/PUD DENIED FEB. 19, 1986
	(A22)	KITSAP DCD LETTER FEB. 24, 1986
19	(A23)	NOTICE CANCEL JUNE 18, 1986
	(A24)	AGENDA SUMMARY AUG. 6, 1986
20	(A25)	NOTICE AUG. 12, 1986
	(A26)	AFFIDAVIT OF NOTICE AUG. 12, 1986
21	(A27)	KITSAP DCD LETTER AUG. 14, 1986
	(A28)	NOTICE CANCEL
22	(A29)	PLANNER III JOB DESCRIPTION
	(A30)	SHORELINE ADMINISTRATOR JOB DESCRIPTION
23	(A31)	DIRECTOR JOB DESCRIPTION
	(A32)	MEMO, SEPA COORDINATOR NOV. 26, 1985

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1 8. Kitsap County Shoreline Management Master Program

2 In addition to the above, we took judicial notice of our prior
3 decision in Stump v. Kitsap County and Posten, SHB 84-53 (1985)¹

4 IV. MOTION TO DISMISS UNRELATED ISSUES

5 Pursuant to RCW 90.58.180, requests for review can be lodged with
6 this Board by "any person aggrieved by the granting, denying or
7 rescinding of a permit on shorelines of the state pursuant to RCW
8 90.58.140."

9 Under RCW 90.58.140 three types of permits may be issued: a)
10 substantial development permits, b) variances, and c) conditional use
11 permits. We deal here with a substantial development permit.

12 Kitsap County's shoreline master program was initially approved by
13 the Department of Ecology and incorporated into the Washington
14 Administrative Code on April 30, 1976. WAC 173-19-260. In this
15 circumstance, the statutory criteria for the issuance of a substantial
16 development permit is set forth in RCW 90.58.140(2), as follows:

17 . . . A permit shall be granted: . . . (b) after
18 adoption or approval, as appropriate, by the department
19 of an applicable master program, only when the
20 development proposed is consistent with the applicable
21 master program and the provisions of chapter 90.58 RCW
[SMA].

-
- 22 1. In that case Dr. Stump challenged a substantial
23 development permit issued to his neighbor Posten for
24 expansion of the latter's dock and marina. After a
25 full evidentiary hearing before this Board, the permit
26 was sustained.

1 The permit system of the SMA is "inextricably interrelated with
2 and supplemented by the requirements of SEPA." Sisley v. San Juan
3 County, 89 Wn 2d 78, 83, 569 P.2d 712 (1977). But, except for this
4 clearly established statutory overlay, the Board's jurisdiction is
5 limited to determining whether the permit in question meets the
6 above-quoted requirements for consistency with the applicable master
7 program and the SMA itself.

8 The County asserts, by motion, that numerous issues raised by the
9 appellant are beyond this Board's jurisdiction. We agree.

10 Appellant's issues can be divided into seven generic categories:

- 11 1) Local government record considered
- 12 2) Local land use ordinances other than the shorelines master
13 program
- 14 3) Economic impacts
- 15 4) Fairness
- 16 5) Constitutional questions
- 17 6) State Environmental Policy Act (SEPA)
- 18 7) Consistency with the SMA and applicable master program

19 We conclude that most issues raised in the first five categories
20 in this case are not within the Board's reviewing authority.

21 The evidence the local government looked at or how it weighed
22 that evidence is, for the most part, irrelevant to the review
23 conducted by this Board. This is so, because the Board's proceedings
24

1 are not confined to the record made before the permitting entity. The
2 Board hears cases de novo and directly applies the statutory standards
3 to the evidence presented at its own hearing. San Juan County v.
4 Department of Natural Resources, 28 Wn App 796, 626 P.2d 995 (1981).

5 Accordingly, the following issues are dismissed insofar as they
6 deal with the record the local government considered: II, III, IV,
7 VII, XVII, XVIII, S.I, S.VI.

8 Appellant asserts that the zoning and planned unit development
9 decisions regarding this project were improper. The Board's authority
10 does not extend to determining compliance with zoning codes or other
11 land use requirements, unless the requirements have been made part of
12 the applicable master program approved by the Department of Ecology,
13 thus attaining the status of use regulations under the statute. See
14 RCW 90.58.100; Severns v. DOE, SHB 80-2 (1980). There has been no
15 showing of such incorporation here and our examination of the Kitsap
16 County Shoreline Management Master Program has revealed none.

17 Accordingly, the following issues are dismissed insofar as they
18 assert non-compliance with zoning or land use requirements other than
19 those in the shorelines master program; II, VII, XIII, XV, XXI, XXII,
20 S.I, S.II, S.III, S.V, S.VI, S.VII, S.VIII, S.X.

21 In a variety of ways, appellant claims that the prosecution of
22 the proposed project will be harmful to his economic interests. We do
23 not construe the policy of the SMA so broadly as to encompass our
24

1 review of the assertions made in this category. The economic
2 viability of a proposed development may be relevant on shorelines of
3 statewide significance if the lack of such viability is likely to
4 produce adverse physical effects on the shorelines. See Friends of
5 the Columbia Gorge v. Skamania County, SHB 84-57 and 84-60 (1986).
6 But, the bare question of whether a development, to be constructed on
7 ordinary shorelines and otherwise permissible under the master
8 program, will help or hurt a neighbor's business is not, we believe,
9 within RCW 90.58.020.

10 Moreover, this Board is not empowered to reach questions of
11 damages. Damages to public or private property caused by violations
12 of the SMA or of shorelines permits are subject to separate
13 proceedings under RCW 90.58.230. If some special duty of care of the
14 County to appellant were breached by a wrongful permit issuance, a
15 tort action in Superior Court might lie. See J & B Development Co. v.
16 King County, 100 Wn 2d 299, 669 P.2d 468 (1983).

17 Accordingly, the following issues are dismissed insofar as they
18 concern the impact of the development on appellant's economic
19 interests: XX, XXIV, S.VIII, S.IX, S.X.

20 Appellant intimates that the decision to grant the permit was
21 arrived at unfairly. To the extent that these assertions attempt to
22 raise an appearance of fairness doctrine question, our review of the
23 record leads us to conclude that RCW 42.36.080 precludes their use to
24 invalidate the permit decision in question.

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1 Accordingly, the following issues are dismissed insofar as they
2 concern the appearance of fairness doctrine: XVII, S.I, S.IV.

3 Several assertions that the decision at issue is constitutionally
4 defective are made. As a creature of statute exercising only
5 quasi-judicial authority, this Board lacks the power to determine
6 constitutional questions. See Yakima County Clean Air Authority v.
7 Glascan Builders, Inc., 85 Wn 2d 255, 534 P.2d 33 (1975).

8 Accordingly, the following issues are dismissed: S.III, S.V.

9 V. FACTS

10 We find the following facts to be material and undisputed:

11 1. On February 20, 1986, William Stump applied to Kitsap County
12 for a substantial development permit, proposing to remodel an existing
13 residence on shorelines into three apartments. (Application No. 456).

14 2. The proposed development is on a lot at 104 Grandview
15 Boulevard in Keyport Washington. The property is bounded on the north
16 by Liberty Bay and on the south by the boulevard. It measures
17 approximately 51 feet (east - west) 170 feet (north - south).

18 The surrounding area is used for residences and for commercial
19 enterprises and for public facilities. The shoreline environment
20 designation for the area is "urban." The area is not within
21 shorelines of statewide significance.

22 3. The property next door to the west is owned by appellant Posten.
23 He maintains his family's residence there. He also maintains
24

1 on his lot a marina and boat repair business, including a shop.
2 Posten has been given approval for facilities on his property to
3 include a 352 foot pier and moorage structure, accommodating 24
4 moorage slips; a boat fueling float; a 28 foot by 20 foot utility
5 building; and a parking lot providing 17 parking spaces. See Stump v.
6 Kitsap County and Posten, SHB 84-53 (1985).

7 4. In connection with the remodeling project, Dr. Stump requested a
8 rezone and planned unit development approval from the County in order
9 to allow multiple family use of the property under land use ordinances
10 other than the shoreline master program. An environmental checklist
11 for the project was prepared on October 9, 1985.

12 5. A determination of non-significance (DNS) was issued by
13 Kitsap County on the Stump proposal on October 24, 1985. This was
14 appealed by Posten through a County administrative process. On May
15 29, 1986, the Kitsap County Hearing examiner concluded that the appeal
16 should be denied.

17 6. The initial Stump proposal was for a five-unit apartment
18 building. After a hearing on this initial plan on November 27, 1985,
19 the County's Hearing Examiner recommended that the application be
20 denied without prejudice to the applicant's ability to submit a
21 revised application. At the same time, Stump was advised that a
22 substantial development permit would be necessary.

1 7. Subsequently the proposal was scaled down to the present
2 three-apartment configuration and revised zoning and planned unit
3 development requests were filed on February 20, 1986. A hearing on
4 the revised zoning and planned unit development requests was held on
5 April 10, 1986. On May 29, 1986, the Hearing Examiner recommended
6 approval, subject to 12 enumerated conditions.

7 8. On September 8, 1986, the Kitsap County Board of
8 Commissioners conducted a public hearing on Substantial Development
9 Permit No. 456. In conjunction with this hearing, the commissioners
10 also heard the appeals of Warren Posten and others of the Hearing
11 Examiner's recommendations on the rezone and planned unit development
12 matters.

13 9. The commissioners, on September 22, 1986, approved
14 Substantial Development Permit No. 456, and also approved the rezone
15 and planned unit development requests. The 12 conditions recommended
16 by the Hearing Examiner in his zoning decision were incorporated by
17 the commissioners into the substantial development permit as well.

18 10. The residential structure to be remodeled is now a
19 four-bedroom home with a daylight basement. The project principally
20 involves internal modifications to separate the planned apartments.
21 The total number of bedrooms will not increase. The only significant
22 external modification of the house is a 19x12 foot addition at the
23 rear, away from the water, filling in what is now a notch in the
24 structural outline.

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1 11. No shoreward development is proposed. An exterior deck on
2 the north side of the house will be slightly cut back. No change will
3 be made in existing structure height. The property is presently
4 served by public sewer and public water.

5 12. The existing three-car garage upland of the house near the
6 street, will be retained. The existing asphalt driveway adjacent to
7 the garage will be expanded slightly. Total parking space will be
8 provided for five cars.

9 13. The conditions incorporated into the substantial development
10 permit were designed to meet zoning and planned unit development
11 issues. These conditions are as follows:

- 12 1. That all applicable Bremerton-Kitsap County Health
13 Department regulations be adhered to prior to final
approval.
- 14 2. That the requirements of the Public Utility
15 District No. 1 and the County Health Department be
adhered to in the design and installation of the
water system.
- 16 3. That the requirements of the Kitsap County
17 Wastewater Division of the Public Works Department
18 are adhered to for the design and construction of
the sewer system.
- 19 4. That the requirements of the Department of Public
works, Engineering Division be adhered to.
- 20 5. That access to and from the property be limited to
21 access shown on the preliminary Planned Unit
22 Development and approved prior to final Planned
Unit Development approval by the Kitsap County
Department of Public Works, Engineering Division.
- 23 6. Prior to final approval or any construction
24 activity on site, the following must be submitted
25 to and approved by the County Public Works
Department:

- 1 a) A final detailed drainage construction plan.
- 2 b) A silt and erosion control plan. The
- 3 facilities as proposed on this plan shall be
- 4 in operation prior to land clearing and/or construction
- 5 and satisfactorily maintained until construction and
- 6 landscaping are completed and the potential for on-site
- 7 erosion has diminished.
- 8
- 9 7. Signs: All signs shall be in keeping with the
- 10 character of the neighborhood. Sign design and
- 11 location shall be reviewed and approved by the
- 12 Department of Community Development as part of
- 13 final planned unit development approval.
- 14
- 15 8. Lighting: Artificial outdoor lighting shall be
- 16 arranged so that the light is directed away from
- 17 adjoining properties so that no more than one (1')
- 18 foot candle of illumination leaves the property
- 19 boundary.
- 20
- 21 9. That the applicant provide a final landscape plan
- 22 to be reviewed and approved by the Department of
- 23 Community Development for recommendation to the
- 24 Board of County Commissioners prior to final
- 25 Planned Unit Development approval. Upon
- 26 installation of said landscaping, the Department of
- 27 Community Development shall inspect and approve it
- prior to occupancy. In particular, a five foot
- planting strip incorporating existing vegetation
- shall be established along the east and west
- property lines adjacent to the parking area to
- screen the parking from the neighboring parties.
10. That the following covenant shall be recorded prior
- to final planned unit development approval.

20 "COVENANT FOR SIDEWALK IMPROVEMENTS"

21 This property is subject to the costs of sidewalk

22 improvements along Grandview Blvd. In the event

23 that the Kitsap County Engineer determines that

24 sidewalk improvements are necessary, the owner of

25 the property shall bear it's share of the cost of

26 such improvements. This covenant shall run with

27 the land and the costs of improvements above

described shall be a charge on the same."

- 1 11. That a Shoreline Development Permit be acquired
2 pursuant to the Kitsap County Shoreline Management
3 Master Program.
4 12. That the provisions of Section 7.e(3)(a) regarding
5 buffers on commercial uses abutting "R" zones
6 should and are hereby waived as it relates to the
7 property abutting the subject property on the west
8 and abutting the subject property on the east.
9 Further condition of approval herein is that the
10 applicant, his heirs, successors and assigns are
11 hereby prohibited from requiring future
12 developments on those properties the maintenance of
13 such buffer zones.

8 CONCLUSIONS OF LAW

9 1. Appellant seems to allege that the decision at issue is the
10 result of impermissible actual bias. (Issues XVII, S.III, S.IV,
11 S.VII, S.XI.) In response to the County's Motion for Summary
12 Judgment, appellant did not provide sworn statements on personal
13 knowledge sufficient to raise a genuine issue on these matters for
14 trial. CR 56(e). His allegations, even if true, do not establish a
15 preconceived adverse opinion, without just grounds or before
16 sufficient knowledge, on the part of those whose decision it was to
17 issue the permit. In re Borchert, 57 Wn. 2d 719, 359 P.2d 789 (1961).
18 On the record before us, we cannot and do not invalidate the permit
19 decision at issue on grounds of actual bias.

20 2. Appellant appears to raise a separate issue that approval of
21 Substantial Development Permit No. 456 is a violation of the public
22 trust doctrine. (Issues XXIII, XXIV). Although the doctrine is alive
23 and well in this state, Caminito v. Boyle, 107 Wn 2d 662, _____
24 P.2d _____ (1987), its requirements are fully met by the SMA, and,

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1 therefore, no distinct violation is asserted by relying on the
2 doctrine. Portage Bay - Roanoke Park Community Council v. Shorelines
3 Hearings Board, 92 Wn 2d 1, 593 P.2d 151 (1979).

4 3. We view the issues that remain as raising, in sum, the
5 questions of whether an environmental impact statement should have
6 been required under chapter 43.21C RCW (SEPA) and of whether the
7 development proposed is consistent with the applicable master program
8 and the provisions of chapter 90.58 RCW (SMA).

9 4. No procedural problems with the issuance of the Declaration
10 of Nonsignificance (DNS) are alleged. The question, then, is
11 substantively whether the DNS was proper.

12 A DNS is appropriate where the responsible official determines
13 that "no probable significant adverse environmental impact" will
14 result from a proposal. WAC 197-11-340.

15 The environmental checklist used in this case shows that
16 appropriate elements of both the natural and the built environment
17 were considered.

18 The affidavit of the County's Shoreline Administrator to the
19 effect that proposed physical alterations to the house will not
20 adversely affect the environment is essentially uncontroverted.

21 Appellant's point seems to be that increased human density and
22 the need to accommodate more parked cars may cause adverse effects.
23 The undisputed increase in density and traffic is no more than the
24

1 Stumps could accomplish presently if they had a large family. We
2 cannot say that "more than a moderate effect on the quality of the
3 environment is a reasonable probability" in this case. See Sisley v.
4 San Juan County, 89 Wn 2d 78, 569 P.2d 712 (1977).

5 Moreover, we are mindful that the decision of the government
6 agency involved, concerning whether an environmental impact statement
7 is required, must be accorded substantial weight. RCW 43.21C.090.

8 We hold, therefore, that the issuance of a DNS in this case was
9 legally correct. No impact statement was required. SEPA was not
10 violated.

11 5. As to consistency with the Kitsap County Shoreline Program
12 (KCSMP), appellant points to a number of provisions which he feels the
13 County did not consider. We have reviewed these references and
14 conclude that they do not require a result different from the decision
15 the County reached.

16 The use activity in question is multi-family residential in an
17 "Urban" shoreline environment. Such a use is permitted outright,
18 subject to specified regulatory controls. KCSMP Compatibility Chart,
19 p. 7-3. The regulatory controls listed deal with associated boating
20 facilities, over the water construction, sewage disposal and water
21 systems. None will be violated in the instant case. KCSMP, p. 7-24.

22 Further, the proposed development conforms to the master
23 program's general policies for residential development, KCSMP p.
24

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1 7-21. These policies commence with the statement that "the planned
2 unit development concept should be encouraged on the shoreline." The
3 other policies relate to density and site coverage, distance from
4 water, waste disposal, shoreline vegetation and access. None of these
5 will be significantly altered by this proposal.

6 Indeed, the level of activity on Stump's property, particularly
7 as relates to traffic and parking, is much less than that found
8 appropriate and approved for his next door neighbor, Posten.

9 We are urged to review the definition of non-water related use,
10 KCSMP p. 2-6; the goal on economic development, KCSMP p. 3-1; the
11 definition and purpose of urban environment, KCSMP p. 4-4. None of
12 these references, singly or taken together, support a conclusion that
13 the development and use allowed by the challenged permit are
14 incompatible with the overall master program purpose to foster a
15 multiplicity of uses in urban environments. Residential use is
16 recognized in both the program and the Act as an appropriate shoreline
17 use, in many cases notwithstanding that it cannot, strictly speaking,
18 be termed a water related use.

19 6. Consistency of the permit with the SMA itself is, likewise,
20 not, we conclude, a problem. Appellant draws our attention to
21 preferences which have to do with development on shorelines of
22 statewide significance. However, since the area in question is not
23 such a shoreline, these considerations do not apply. Appellant notes
24

1 that the permit does not address public access. Although public
2 access is among the priorities stated in RCW 98.58.020 and sought to
3 be implemented by the master program, e.g. KCSMP, p. 3-1, not every
4 development permitted on shorelines must provide for substantial
5 increase in such access. The access goal must be viewed with a
6 practical eye toward implementing improvements in those circumstances
7 where a realistic opportunity to do so is presented by a project.
8 See, Department of Ecology v. Ballard Elks, 84 Wn 2d 551, 527 P.2d
9 1121 (1974). In the instant case, the status quo as to public access
10 is maintained, and perhaps slightly improved. In a modest
11 residential conversion of this kind the SMA requires no more.

12 Ultimately consideration of consistency under the SMA comes down
13 to whether the development under the policies of the Act is
14 "reasonable and appropriate." Those policies as set forth in RCW
15 90.58.020 emphasize preservation of public navigational rights,
16 environmental protection, public health. It is in the sense of
17 promoting these values that developments promote the "public interest."

18 Viewing this minor proposed residential alteration in the context
19 of the neighborhood involved and weighing the proposal against the
20 policies of the SMA as a whole, we detect no conflict. We believe the
21 development is "reasonable and appropriate" in shorelines terms.

22 7. Finally, we observe that many of appellant's complaints
23 really have to do with conformity or the lack of it with the County's
24

1 zoning and planned unit development requirements. These matters are
2 irrelevant to analysis of the shorelines issues. Purely as a
3 shorelines case, this development can be upheld as a matter of law.
4 No features requiring special consideration under conditional use or
5 variance criteria were presented. The instant project fits squarely
6 within the uses pre-selected for this area through the shorelines
7 planning process.

ORDER

The County's Motions for Dismissal of Unrelated Issues and for Summary Judgment are granted.

Kitsap County's approval of a substantial development permit to William Stump in response to Application No. 456 is affirmed.

DONE this 2d day of July, 1987.

SHORELINES HEARINGS BOARD

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WICK DUFFORD, Member

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